

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter)	
)	
Federal Communications Commission)	
)	WC Docket 06-54
Time Warner Cable's Petition for Preemption)	
Regarding the South Carolina Public Service)	
Commission's Denial of a Certificate of Public)	
Convenience and Necessity)	
)	

COMMENTS OF THE IOWA UTILITIES BOARD

The Iowa Utilities Board (IUB) submits these comments in response to the Public Notice inviting comments on Time Warner Cable's (TWC's) petition for preemption. On March 6, 2006, the FCC released a Pleading Cycle concerning TWC's request for the FCC to preempt the South Carolina Public Service Commission's decision to deny TWC a certificate of public convenience and necessity (CPCN) for certain areas served by rural local exchange carriers. TWC asserts that the South Carolina Public Service Commission's refusal to grant TWC a CPCN in these areas has the effect of prohibiting TWC from providing telecommunications services, and thus, violates Section 253 of the Act. TWC requests the FCC issue an order preempting the South Carolina Public Service Commission's decision and directing it to grant TWC the CPCN for which TWC applied.

TWC is arguing that a State's refusal to issue a CPCN is a barrier to market entry and that action should be preempted by the FCC. The IUB disagrees. Certificates to provide local exchange service are matters of state law. If a State issues CPCNs for certain purposes, and a proposal does not fit within those purposes, then that is not a barrier to entry (if it is applied to all applicants in a neutral manner). The applicant that does not meet state law requirements can either offer the services that the State is willing to certificate or it can take other actions to achieve its desired end.

Under Iowa law, the IUB issues certificates only for wireline retail voice service providers. TWC would be able to obtain a certificate in Iowa if this is the service it proposes to offer. If this is not the service it proposes to offer in Iowa, an alternative means could be the receipt of an "order in lieu of certificate" giving TWC all the rights, privileges, and obligations of a certificate holder.¹

The FCC cannot force States to issue certificates in violation of State law. States have the right and an obligation to look at local service issues. 47 USC § 253(b) preserves State authority to "ensure the continued quality of telecommunications services" within the State. Other States' rights reinforced by the Telecommunications Act of 1996 are in 47 USC §§ 252(e)(3) and 251(d)(3). 47 USC § 252(e)(3), authorizes a State commission, in its review of an interconnection agreement, to establish and to enforce "other requirements of State law, including compliance with intrastate telecommunications service quality standards or requirements." 47 USC § 251(d)(3) states that the FCC shall

¹ The IUB has issued an "Order in Lieu of Certificate" on behalf of certain carriers. One carrier is Level 3 Communications, LLC and the order is attached.

not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of § 251; and (C) does not substantially prevent implementation of the requirements of § 251 and the purposes of the Telecommunications Act of 1996.

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Respectfully submitted,

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_____/s/_____
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